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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,445	09/08/2003	Gunther Grau	COH-15008	1415
40854	7590	03/29/2005	EXAMINER	
RANKIN, HILL, PORTER & CLARK LLP 4080 ERIE STREET WILLOUGHBY, OH 44094-7836			STEIN, JAMES D	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/657,445	<b>Applicant(s)</b> GRAU ET AL.	
	<b>Examiner</b> James D. Stein	<b>Art Unit</b> 2874	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☒ Claim(s) 10 is/are rejected.
- 7) ☒ Claim(s) 1 and 10-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09/08/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

Claims 1 and 10-14 are objected to because of the following informalities: Claim 1 recites the abbreviation “rsp.,’ which is unclear. It should be replaced with “or” instead. Also, claim 1 should read: “...signals *are* sampled periodically...” Claims 10-14 list reference numerals, which are not considered in U.S. Patent Examining Procedure. Also, Claim 10 references claim 1 but does not appear to be a dependent claim. To avoid confusion, the Examiner suggests amending the claim to recite, substantially, the subject matter of claim 1. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 10 is rejected under 35 U.S.C. 102(a) and (e) as being anticipated by [USPUB 20020060820] to Buchali, which discloses a related optical receiver with an eye diagram monitor. Fig. 4 of Buchali shows an optical data signal 7 or sequence, which is fed into the input of threshold decision circuits S0-S2, and the output of the threshold decision circuits are connected to the input of counters E1 and E2. The two-input EXOR gates E1 and E2 can be considered counters if they have feedback. This is known to one of skill in the digital signal art.

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The high-speed eye monitor 5 shown in Fig. 2 can be considered a storage device because it displays transmission data from many signal samples, and thus, inherently stores data. Also, regulators R1 and R2 are included in the decision circuit: "in the event of deviations from the control variables, the regulators readjust the threshold values for the decision elements S1 and S2 and output these as eye edges [0025]." Therefore, the regulators can be considered to be an "analysis device" as claimed by applicant.

***Allowable Subject Matter***

Claims 1-9 are allowed.

None of the cited prior art discloses or suggests a method of measuring optical or electrical signal sequences wherein a multitude of consecutive signals are sampled periodically at a sampling time with at least one adjustable threshold value, wherein the probability that the value of the signal sequence at a sampling time is above or below each threshold value is measured, after a given period of time the threshold value is changed and the probability of the preceding threshold value is subtracted from the probability of the current threshold value.

3DS      Claims 11-<sup>14</sup>~~10~~ are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the cited prior art discloses or suggests: The eye diagram monitor, wherein the adder is provided by which a DC voltage added to the signal sequence and the sum of the signal sequence and DC voltage is input of the threshold decision circuit; the adder current-driven emitter-follower with a series resistor or a current mirror; the threshold

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decision circuit or the counter is realized by a flip-flop; the threshold decision circuit is connected to an adjustable phase shifter.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. [USPUB 20030101015] to Douskey et al, which discloses a related eye diagram monitor.

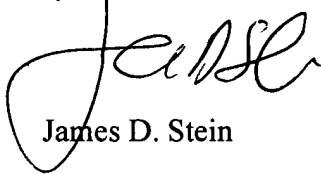
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James D. Stein whose telephone number is (571) 272-2132. The examiner can normally be reached on M-F (8:00am-4:30pm).

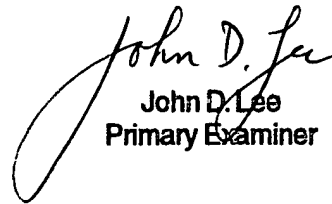
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James D. Stein



John D. Lee  
Primary Examiner